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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1991

DOMINICAN REPUBLIC*

[15 June 1992]

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* To consult the initial report submitted by the Government of the Dominican Republic, see document CCPR/C/6/Add.10; for its consideration by the Committee, see documents CCPR/C/SR.577, SR.578, SR.581 and SR.582 and Official records of the General Assembly, fortieth session, Supplement No. 40 (A/40/40, paras. 382-429). To consult the second periodic report submitted by the Government of the Dominican Republic, see document CCPR/C/32/Add.16; for its consideration by the Committee, see documents CCPR/C/SR.967 to SR.970 and Official records of the General Assembly, forty-fifth session, Supplement No. 40, (A/45/40), paras. 355-387.

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I. GENERAL

1. In the Dominican Republic the rights recognized by the International Covenant on Civil and Political Rights are established and protected by the Constitution, in particular the provisions of articles II, V and XI, and by various laws which will be mentioned in this report in connection with each of the articles in parts I, II and III of the Covenant.

2. Within the legal order of the Dominican Republic, the Constitution is the supreme instrument which prevails over all other instruments emanating from the various organs of public power. The current Constitution was adopted in 1966 and its complete text is appended to this report.

3. The international treaties and conventions approved and ratified by the National Congress are incorporated in domestic legislation.

4. Consequently, the International Covenant on Civil and Political Rights, which was approved and ratified by decision No. 684 of 27 October 1977 and published in Gaceta Oficial No. 9,451 of 12 November 1977, forms part of Dominican domestic legislation. The same applies to the Optional Protocol to the International Covenant and to the American Convention on Human Rights.

5. These international instruments remedy any possible gap or deficiency with respect to recognition of human rights in the remainder of the legislation in force.

A. Geographical description

6. The Dominican Republic is one of the countries that make up the island of Hispaniola, which it shares with the neighbouring Republic of Haiti across a frontier of 338 km.

7. The Dominican Republic occupies the eastern part of the island and has a land area of 48,442 square kilometres; it measures 390 km from east to west and 265 km from north to south. To the south lies the Caribbean Sea and to the north the Atlantic Ocean; its coastline is 1,575 km long.

8. Its terrain is generally hilly and four almost parallel ranges of mountains covered with thick vegetation traverse the country from east to west. Forming part of the highest range, the Cordillera Central, is the Pico Duarte, the highest mountain in the Caribbean region at 3,175 metres above sea level. Between the central and northern ranges lies the fertile area of Cibao, a beautiful, heavily populated valley with many and varied crop and livestock farms.

9. Rainfall is scattered almost throughout the year, but is generally heaviest between May/June and September/November. The island's climate is tropical, tempered by sea breezes and ocean currents; the average temperature is between 18° and 28° C.

B. Demographic profile 1990

10. In 1990 the estimated population was 7.2 million, with a population density of 148.4 inhabitants per square kilometre. The annual growth rate is 2.2 per cent.

11. Other indicators for 1990 were as follows:

Birth rate	31.3 per cent
Death rate	6.8
Fertility rate	3.8 children per woman
Life expectancy at birth	65.9 years
Urban population	60.4 per cent
Rural population	39.6 per cent
Male population	50.8 per cent
Female population	49.2 per cent
Population under the age of 15	39.3 per cent
Population over the the age of 65	3.3 per cent
Infant mortality rate	85/1,000

C. Economic profile 1990

12. Economic indicators for 1990 were as follows:

GDP at current prices	RD$ 60,555 million = US$ 7.091 million
Per capita income	US$ 999.00
Average exchange rate	1 dollar = RD$ 8.54
Inflation rate	100.68 per cent
External debt	US$ 4,211.8 million
Per capita external debt	US$ 584.97
Exports	US$ 704.0 million
Imports	US$ 1,807.1 million
Trade balance	- US$ 1,103.1 million

Labour force	3 million
Unemployment rate	29.2 per cent

13. The Dominican Republic is an eminently agricultural country which bases its trade on crop and livestock production (cane sugar, coffee, cocoa, tobacco, meat). Its metal exports are also of some significance, as is the tourist structure, which in the last few years has been developing as a strong generator of currency earnings.

D. Cultural profile 1990

14. Listed below are a few statistics of a cultural character:

Literacy rate	77.3 per cent	
Illiteracy rate	22.7 per cent	
Mother tongue	Spanish	
Religion	Catholic	96.6 per cent
	Protestant	1.2 per cent
	Other	2.2 per cent
Population of school age	43.1 per cent	
University students	1.6 per cent	

E. Political structure

15. The Dominican Republic has a civil, democratic, representative and republican Government. The State is composed of three powers:

(a) The Executive Power, exercised by the President of the Republic, who is elected every four years, in accordance with the Constitution, and is advised by a cabinet composed of 13 Secretaries of State;

(b) The Legislature, which is composed of two houses: the Senate, with 30 members, one for each province (29) and the National District, and the Chamber of Deputies or Lower House, with 120 members;

(c) The Judiciary, composed of a Supreme Court of Justice made up of 11 judges. Then there is the Office of the Procurator-General of the Republic, and eight courts of appeal, each of which is situated in a judicial department. Each of the 29 provinces is a judicial district in which a court of first instance sits. Apart from the ordinary courts there are special courts such as the Land Court and the Chamber of Accounts, which acts as a higher administrative tribunal. The powers of a court of cassation are exercised by the Supreme Court of Justice in addition to its own functions. As regards members of the armed services, they are governed by the Code of Justice of the Armed Forces.

F. General normative framework of human rights

16. The Office of the Procurator-General of the Republic is the body which has competence to ensure full respect for human rights.

17. The second section (art. 114) of the Penal Code states: "Any public officials, agents or delegates of the Government who have ordered or committed an arbitrary act or an act which infringes individual freedom, the political rights of one or more citizens or the Constitution shall be sentenced to the penalty of civic dishonour. If, however, they establish that they acted on orders from superiors to whom they owed obedience in respect of matters within their competence, they shall be exempt from the penalty, which in this case shall apply to the superiors who gave the relevant order".

18. The protection of human rights in the Dominican Republic is a constitutional matter. Article 8 of the Constitution, relating to individual and social rights, contains the following provisions, inter alia:

> "Art. 8. The effective protection of the rights of the human person and the maintenance of the means for his progressive development within a system of individual liberty and social justice compatible with public policy, the general well-being and the rights of all are recognized as the principal aims of the State. In order to guarantee the accomplishment of these aims, the following norms are laid down:
>
> 1. The inviolability of life;
> 2. Individual security;
> 3. The inviolability of the home;
> 4. Freedom of movement;
> 5. No one shall be compelled to do what the law does not require or be prevented from doing what the law does not prohibit;
> 6. Freedom of thought;
> 7. Freedom of association and assembly;
> 8. Freedom of conscience and worship;
> 9. Inviolability of correspondence;
> 10. Free access to the information media;
> 11. Freedom of work;
> 12. Freedom of enterprise;
> 13. Right to own property;
> 14. Protection of intellectual property;

15. Protection of the family;

16. Freedom of education;

17. Protection of the State against unemployment, sickness, disability and old age."

19. The rights provided for in the Covenant and the other human rights instruments are covered mainly by the Constitution, and by the ratification of those instruments by the National Congress, which converts them into domestic provisions of a binding character.

20. With regard to derogation from these rights, paragraphs 7 and 8 of article 55 of the Constitution provide:

> "In the event of a disturbance of the public peace, if Congress is not in session, to declare a state of siege wherever the foregoing exists, and suspend the human rights which, pursuant to article 37 (7) of this Constitution, Congress is permitted to suspend, in the event of serious or imminent danger to national sovereignty, he may also declare a state of national emergency, with the effects and requirements indicated in paragraph 8 of that article. In the event of a public disaster, he may, in addition, declare to be disaster areas those areas in which damage has occurred owing to meteors, earthquakes, floods or any other natural phenomenon, or as a result of epidemics.
>
> "In the event of a violation of the provisions contained in article 8, paragraph 10 (a) and (d), of the Constitution which disrupts or threatens to disrupt public order or the security of the State or the regular functioning of public services or public utilities or prevents the performance of economic activities, the President of the Republic shall adopt the provisional police and security measures necessary to avert the emergency, and shall be required to inform Congress of the emergency and the measures adopted."

These paragraphs establish the cases and circumstances in which, after declaration of the state of emergency, restrictions on these rights may be authorized.

21. These cases fundamentally concern situations in which national sovereignty is in serious and imminent danger, and those in which public order, the very security of the State and the regular functioning of public services are disrupted or threatened. This prerogative, placed under the responsibility of the President of the Republic, may be exercised only if Congress is not in session since, in other circumstances, this responsibility is conferred on another power of the State under article 37, paragraphs 7 and 8, of the Constitution, which read:

> "In the event of disturbance of the peace or public disaster, to declare a state of siege or to suspend, only where the foregoing exist and for their duration, the exercise of the individual rights established in article 8, paragraphs 2 (b), (c), (d), (e), (f) and (g), 3, 4, 6, 7 and 9.

"If national sovereignty is exposed to serious and imminent danger, Congress may declare a state of national emergency, suspending the exercise of individual rights with the exception of the inviolability of life, as established in article 8 (1) of this Constitution. If Congress is not in session, the President of the Republic may order the same measure, which shall entail convening Congress in order to inform it of developments and the measures taken."

In no case or circumstances, however, is provision made for an exception to the inviolability of life.

22. Article 37, paragraph 14, of the Constitution in force in the Dominican Republic establishes as a responsibility of the National Congress that of approving or rejecting any international treaties or conventions concluded by the Executive; consequently, these instruments become part of our national legal order with the same rank or standing as any ordinary provision. The human rights instruments accordingly have to undergo these procedures before becoming enforceable within the national territory.

23. As has already been stated, in order to be invoked before the courts, administrative bodies or any other organ, the human rights instruments or any international treaty or agreement must be previously approved, in other words ratified, by the National Congress. Consequently, no individual may invoke any treaty or agreement and no treaty or agreement may be implemented by any organ or court unless the treaty or agreement in question has been converted into a domestic law.

24. At the governmental level, there is no entity which is directly responsible for supervision of the implementation of human rights, although overall supervision is exercised through the Office of the Procurator-General of the Republic, which monitors the implementation, and penalties for violation, of human rights.

25. The greatest possible publicity is given to the various international human rights instruments by the non-governmental organizations scattered around the country; through various kinds of meetings, round tables and debates, they promote and publicize not only the content, but also the implementation and validity of these instruments in our country.

26. The Office of the Secretary of State for Foreign Affairs has informally requested cooperation in the establishment of a Centre for Human Rights in the Dominican Republic and has requested illustrated pamphlets on human rights, for distribution in schools, universities, etc., the idea being that after distribution human rights will be the subject of a course both in basic and in higher education.

II. INFORMATION RELATING TO THE ARTICLES IN PARTS I, II AND III OF THE COVENANT

Article 2

27. As a signatory of the International Covenant on Civil and Political Rights, the Dominican Republic establishes and guarantees to all individuals

resident within the national territory all the rights and privileges provided for in the basic law of the State, the subsidiary laws, and the covenants and conventions signed by the State. In particular, article 11 of the Civil Code grants to aliens the same civil rights as those established for nationals of the Dominican Republic under treaties by which the country of the alien grants those rights to Dominican nationals, on the basis of the principle of reciprocity.

28. In the Dominican Republic, there is no discrimination on grounds of national or social origin, race, colour, sex, language, religion, political or other opinion, financial status, birth or any other social condition.

29. The situation of aliens arriving in the Dominican Republic is governed by the Immigration Act (No. 95) of 1939, which classifies aliens admitted to the national territory in the following manner:

> "Art. 3. Aliens wishing to be admitted to the territory of the Dominican Republic shall be deemed to be immigrants or non-immigrants. Aliens wishing to be admitted shall be deemed to be immigrants, unless they are in one of the following categories of non-immigrants:
>
> (1) Visitors for purposes of business, study, leisure or interest;
>
> (2) Persons in transit through the territory of the Republic in the course of travel to another country;
>
> (3) Persons employed on ships or aircraft;
>
> (4) Temporary labourers and their families.
>
> Aliens admitted as immigrants may reside indefinitely in the Republic. Non-immigrants shall be granted only one temporary admission and this shall be regulated by the conditions prescribed in Immigration Regulation No. 279 of 12 May 1939, unless an alien admitted as a non-immigrant is later deemed to be an immigrant as a result of his full compliance with the requirements relating to immigrants.
>
> Temporary labourers shall be admitted to the territory of the Dominican Republic only when their admission is requested by agricultural undertakings. This procedure shall be subject to the numbers and conditions prescribed by the Office of the Secretary of State for Internal and Police Affairs, in order to meet the needs of the aforesaid undertakings and to supervise their admission, temporary stay and return to the country from which they originated."

30. The Executive has taken the view that it is in the Republic's highest interest to regularize the situation in the country of Haitian citizens, most of whom have no papers here or in their own country, in order to define their status as immigrants with right of temporary residence or labourers for specific periods, and especially those working in the factories, plantations or other premises of sugar undertakings, when they sign a contract - drawn up in the two languages in use on the island - which establishes the rights of the person in question and the conditions of work. It further considers that

it is essential to redouble efforts, both by the national Government and by the private sector, to improve the living conditions of national and foreign labourers engaged in the arduous tasks of sowing, growing, cutting and transporting cane. It has accordingly issued Decree No. 417-90, article 1 of which instructs the Directorate-General for Migration to continue with all possible dispatch the work of regularizing the presence of all Haitians on our territory. The Directorate-General is required to determine their status as immigrants with right of temporary residence or fixed-term labourers, especially those working on the sowing, growing, cutting and transport of cane in the factories, offices or other premises of sugar undertakings. Any natural or legal persons who employ these Haitian citizens as labourers, regardless of their type of work, are obliged to report the fact.

Article 3

31. With regard to this article of the Covenant, the Constitution, in the first part of article 8, states that the effective protection of the rights of the human being and the maintenance of the means which will enable him to improve himself progressively within a system of individual liberty and social justice, compatible with public order, the general well-being and the rights of all, are recognized as the principal aims of the State. This paragraph makes no distinction between men and women, referring to the human being without any kind of discrimination, as stipulated in article 26 of the Covenant.

32. The participation of females in both secondary and higher education is considerably greater than that of males. In 1990, for instance, 57.36 per cent of the school population was made up of girls up to the age of 19 compared with 42.64 per cent made up of boys. Likewise, the enrolment of women in universities was 56.03 per cent and that of men 43.97 per cent.

Article 4

33. In this connection, please see paragraphs 19 to 21 above. It should, however, be pointed out that in no cases where it is necessary to derogate in an emergency from the rights enshrined in the Covenant or other instruments do those derogations involve any form of discrimination on the ground of race, colour, sex, language, nationality, religion or social origin.

34. Furthermore, it should be noted that since 1965 it has not been necessary to derogate from the rights established in the Covenant and other human rights instruments on the ground of public disaster or a threat to the security of the State, the only situations envisaged by the Constitution of the Dominican Republic in which a state of emergency may be declared.

35. As has already been stated, there are no cases or circumstances in which the inviolability of life may be called in question.

36. Capital punishment was removed from the statute books of the Dominican Republic in 1924.

37. At the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Havana in 1990, the

Dominican Republic was one of the supporters of the resolution on the abolition of the death penalty which was proposed by Italy. Unfortunately, however, the resolution was not adopted since the majority voted against it.

Article 5

38. In the Dominican Republic, the Covenant has not been interpreted as implying for any authorities or private individuals any right "to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the present Covenant".

39. With regard to paragraph 2, the Dominican Republic has enacted no legal provisions derogating from or restricting the fundamental human rights already recognized pursuant to laws, conventions, orders, regulations or custom on the pretext that the Covenant does not recognize such rights or recognizes them to a lesser extent.

Article 6

40. The death penalty was abolished in 1924. This is clearly affirmed in article 8, paragraph 1, of the Constitution, which provides for "the inviolability of life". It goes on to state: "Consequently, the death penalty may in no circumstances be established, imposed or enforced".

41. Act No. 36 of 17 October 1965 relating to the Sale, Use and Possession of Firearms regulates the use of firearms and stipulates that only the Secretary of State for Internal and Police Affairs has authority to issue licences to carry and possess firearms to those persons complying with the requirements of article 16 of Act No. 36. The Secretary of State also has authority to cancel licences when the licence-holder violates article 5, which states:

"The following acts are prohibited:

(a) Sawing off carbines, pistols, revolvers, rifles, shotguns or any other firearm, or causing them to be sawn off;

(b) Altering the trademark, calibre or serial number of weapons;

(c) Modifying, adjusting or converting objects, things or articles in everyday use so that they become weapons which can fire projectiles using gunpowder or any other kind of explosive, air or gas;

(d) Possessing, selling, concealing or transporting such objects, things or articles, or cooperating in or providing the means for the acts mentioned above;

(e) Possessing or carrying firearms with a licence or permit issued by military personnel of any rank or public officials without being duly authorized by law to do so.

Any official who violates the last clause shall be removed from his or her post, without prejudice to any other penalty provided for in this or any other law".

42. In recent months measures restricting the use of firearms have been adopted since many people carry weapons without the appropriate licence. The civilian population are thus being disarmed in order to prevent the abuse of firearms.

43. With regard to item IV (b) of the questionnaire sent by the Human Rights Committee, the infant mortality rate for 1990 was 85/1,000; this figure includes nationals and foreigners.

44. The Government is waging a permanent campaign in support of children, with regular, free vaccinations carried out in the home; as a result, there are no registered cases of poliomyelitis in the country.

Article 7

45. The second part of paragraph 1 of article 8 of the Constitution states "torture or any other penalty or procedure harmful to, or entailing the loss or diminution of, the physical integrity or health of the individual may in no circumstances be established, imposed or enforced."

46. Likewise, article 5 of the Prison System Act (No. 224 of 26 June 1984) states:

"Prisoners may not be subjected to torture, ill-treatment, harassment or humiliation of any kind. Security measures may be used only in the circumstances specified in this Act.

Any member or members of the prison staff who order or engage in such excesses shall be punished by suspension from duty without pay for up to 30 days, without prejudice to their criminal liability. In the event of repetition, they shall be punished by dismissal.

They may, however, lodge a complaint with the governor or whoever is acting in that capacity, in accordance with the provisions of article 34 of this Act when they consider themselves to have been the victim of an arbitrary act. If the complaint is not allowed, they shall have the right to submit it to the General Prison Directorate, which is established under this Act."

47. The Standard Minimum Rules for the Treatment of Prisoners form the basis of the Prison System Act.

48. Untried prisoners or prisoners in pre-trial detention enjoy presumption of innocence and must be treated accordingly. Where the prison permits, untried prisoners may, if they wish, provide their own food, obtaining it from outside through the prison administration or through family or friends. They may also be authorized, if they so wish, to wear their own clothes and to use their own bed linen, provided they are clean and decent. If they wear a

uniform, it must be distinct from that of convicted prisoners. They may be attended by their own doctor or dentist. These provisions are contained in articles 90, 91 and 92 of the Prison System Act.

49. Under article 1 of this Act, prison establishments are divided into penitentiaries, presidios, remand centres and special institutions.

50. Prisoners with a custodial sentence of over two years serve their sentence in a penitentiary; those with a sentence of under two years are held in a presidio; and prisoners awaiting trial spend their period of pre-trial detention in a remand centre.

51. Convicted prisoners with special characteristics are held in special institutions; these prisoners include the mentally ill, first offenders and prisoners on probation. They may be open prisons or prison farms.

52. The Executive determines the location of prison establishments of all types, but in every judicial district there must be at least one remand centre.

53. In locations where there are no separate premises, one building may be used to accommodate prisoners who should be held in penitentiaries, presidios and remand centres. The prisoners are duly segregated.

Article 8

54. The institution of slavery was abolished in the Dominican Republic in 1822.

Article 9

55. Article 8, paragraph 2, of the Constitution recognizes:

> "Security of person. Consequently: (a) No person shall be subjected to bodily restraint for a debt which does not arise from a violation of the penal laws; (b) Except in cases of flagrante delicto, no one shall be imprisoned or restricted in his liberty unless a substantiated written order is issued by a competent judicial authority; (c) Any person deprived of his liberty without cause or without due process of law, or in circumstances other than those provided for by law, shall be released immediately at his own request or at the request of any other person; (d) Any person deprived of his liberty shall be brought before the competent judicial authority within 48 hours of being detained or shall be released; (e) Any arrest shall be terminated or converted into imprisonment within 48 hours of the arrested person being brought before the competent judicial authority, and the person concerned shall be notified within the same time-limit of the decision taken in the case; (f) It is strictly prohibited to move any person being held in custody from a prison establishment to some other place without a substantiated written order by the competent judicial authority; (g) Any person having a detainee in his custody shall produce him whenever he is required to do so by the competent authority.

The Habeas Corpus Act shall determine the summary procedure to be followed in complying with the provisions of subparagraphs (a), (b), (c), (d), (e), (f) and (g), and shall establish the penalties to be imposed."

56. In practice detainees may inform their family by telephone or through persons who know of the detention. Frequently, when families realize that one of their members has disappeared, they visit the various police stations to find out where he or she is. There is no standard procedure for informing families, but once they know the lawyer can take the necessary steps without delay.

57. Interpreting article 8, paragraph 2 (d), of the Constitution as cited above, we wish to state that the maximum period of detention for an individual, and also the time-limit for him to make contact with a defence lawyer, is 48 hours from the time when he was deprived of his liberty. However, this is not what actually occurs in all cases and circumstances, since sometimes this period of detention prior to formal submission is exceeded.

58. Currently, over 70 per cent of the prison population in the Dominican Republic are being held pending trial. In order to reduce this alarming figure, which is due, inter alia, to the limited number of criminal courts, non-working days are being used.

59. The special remedy of habeas corpus, established in our country in 1914, was amended by Act No. 10 of 1978, article 1 of which states: "Any person who for any reason has been deprived of his liberty in the Dominican Republic has the right, either at his own request or at the request of another person, except when he has been so sentenced by a competent judge or court, to apply for a writ of habeas corpus in order to ascertain the reasons for the imprisonment or deprivation of liberty and in order that in such cases his liberty may be restored". The writ of habeas corpus may be applied for, issued and delivered on any day, but the case will only be dealt with on a working day or a day especially appointed for that purpose. It is further provided that the presence of the applicant is not obligatory; he may be represented, without written authorization, by a lawyer or another person acting in his defence who can speak on his behalf. When the competent judge considers that, in the case in question, it does not appear, or it cannot be presumed, that the person deprived of liberty is guilty of a punishable act, he is required to order that person's release.

60. In practice this procedure is used very frequently since all persons deprived of their liberty have access to it and the judges have to be conversant with it.

61. Among the difficulties which may impede full compliance with this procedure is the fact that, although a judge may order the release of a detainee charged with drug trafficking, the State prosecutor will appeal against the judge's order.

Article 10

62. The Dominican Republic considered that the establishment of a prison system based on modern concepts of penology and at the same time consistent with the country's material and human resources called above all for the drafting of a basic law encompassing all the standards and concepts related to penal policy, and that the law should contain general principles with regulations to ensure correct implementation. It consequently adopted the Prison System Act in 1984; in Chapter II it established the General Prison Directorate as a central organization subordinate to the Office of the Procurator-General of the Republic, to manage and supervise all penal institutions in the country (art. 6). Article 7 of the Act states: "The General Prison Directorate shall be principally responsible for the care of prisoners and anti-social elements as defined by law, with a view to achieving their rehabilitation, eliminating or diminishing the threat they pose to society, and attending to their moral and material needs, in conjunction with other similar services, whether public or private."

63. Article 11, in Chapter III on the segregation of prisoners, states: "There shall be separate establishments for men and women. In places where this is not possible, completely separate units shall be established within a single institution, so that there can be no communication between the categories of prisoner mentioned. Establishments for minors shall continue to be governed by the special law relating to them."

Article 11

64. Article 8, paragraph 2, of the Constitution states that no person shall be subjected to bodily restraint for a debt which does not arise from violation of the penal laws.

Article 12

65. Article 8, paragraph 4, of the Constitution establishes "freedom of movement, except for restrictions resulting from penalties imposed by a court, or from police, immigration and health laws." No distinction is made between nationals and aliens. Aliens lawfully present in the country are able to travel about freely and choose their residence where they wish, and are free to leave. Except in cases where they have violated penal laws, Dominican nationals may also enter and leave the country freely in all circumstances.

66. Article 85 of the Penal Code states: "Any person who, by means of acts neither approved nor authorized by the Government, exposes Dominicans to reprisals against their person or their property shall be punished by exile".

67. Article 37, Chapter II of the Penal Code reads: "Any person sentenced to exile shall be removed by order of the Government from the territory of the Republic. The duration of the exile may not exceed three years or be less than one year".

68. This penalty is established in our legislation, in particular in article 115 of the Penal Code, which states "If the order has emanated from a minister of State or if this official has committed one of the acts specified

in the preceding article and, having been requested to revoke the measure, declines to do so or neglects to have it modified, he shall be liable to the penalty of exile after charges have been brought in accordance with the Constitution". In practice, however, the penalty of exile is not imposed.

Article 13

69. The Migration Act No. 95 of 14 April 1939 states, in article 1, that: "The territory of the Republic is open to entry for aliens of good conduct and in good health, subject to the conditions and restrictions imposed by law".

70. Article 13 of the Act states:

"The following aliens shall be arrested and deported by order of the Secretary for Internal and Police Affairs or any other official appointed by him for those purposes:

(1) Any alien who enters the Republic after the date of publication of this Act by means of false or misleading declarations or without examination and approval by the migration authorities in one of the designated ports of entry;

(2) Any alien who enters the Republic after the publication of this Act who was not legally admissible at the time of entry;

(3) Any alien who becomes involved or associates in activities intended to subvert the Dominican Government, or traffics in drugs in violation of the law or becomes involved in other activities contrary to public order and security;

(4) Any alien convicted, after the date of entry into force of this Act, of an offence which was committed within five years of his entry and is punishable by community service or imprisonment;

(5) Any alien who engages in prostitution or is a tenant of a brothel or is employed in a brothel;

(6) Any alien who becomes dependent on social security within five years of his entry, through incapacity or destitution, and who will probably continue to be so dependent;

(7) Any alien who remains in the Republic in violation of a limitation or condition under which he had been admitted as a non-immigrant;

(8) Any labourer who has entered the Republic within one year prior to the date of entry into force of this Act without having been admitted for permanent residence;

(9) Any alien possessing a residence permit predating the entry into force of this Act and who, after expiry of the permit, has not applied for a residence permit, as required by this Act;

(10) Any alien who entered the Republic before the date of entry into force of this Act, does not possess a residence permit and, within three months of that date, has not applied for a residence permit, as required by this Act;

(11) Any alien who fails to renew his residence permit, as required by this Act.

(b) The regulations established in clauses 2, 3, 4, 5 and 6 of this article shall not be affected by the fact that the alien is in possession of a residence permit. In this case, the permit shall be confiscated and cancelled on deportation.

(c) In the cases provided for in clauses 9, 10 and 11 of this article, if deportation would cause exceptional difficulties, the alien may be acquitted and shall be allowed to apply for a residence permit or for the renewal of his permit.

(d) Deportation may take effect under clause 3 of this article at any time after entry, but may not be carried out under any other clause unless the arrest during the deportation proceedings takes place within five years of the original cause of the deportation.

(e) No alien shall be deported without being informed of the specific charges which are the grounds for his deportation or without being given a fair opportunity to refute the charges in accordance with the Migration Regulations (No. 279) of 12 May 1939, except in cases covered by article 10, paragraph 1, and article 13, paragraph 3, of this Act.

(f) In deportation cases, the alien concerned may be detained for up to three months, by order of the Secretary of State for Internal and Police Affairs or the Director-General of Migration. If deportation cannot be carried out within that period because the alien does not have a passport or visa in a travel document, he may be placed at the disposal of the public prosecutor, and the competent criminal court shall sentence him to a term of imprisonment of between six months and two years, according to the gravity of the case. Nevertheless, if, following the trial or sentence, the alien obtains from the proper source a passport or visa enabling him to leave the country, he shall be released for this purpose by the public prosecutor on the application of the Secretary of State for Internal and Police Affairs or the Director-General of Migration, the proceedings being dismissed or the sentence being annulled. Sentences shall not be open to appeal."

70. As a result of an amendment (Act No. 1559 of 31 October 1946), no alien may be deported without being given a fair opportunity to refute the charges against him.

71. The Republic's courts may also order the deportation of any alien, who violates article 13 of the Migration Act (No. 95) as the principal penalty when the case is brought by the Director of the National Investigation Department.

72. The courts may also order deportation as an accessory penalty when the alien has committed a serious or ordinary offence whose gravity merits this penalty.

73. Article 13 (f) of the Migration Act of 1939, quoted above, was amended by Act No. 1559 of 31 October 1946.

74. Section XIII of the Migration Act, under the heading "Deportation", stipulates that migration inspectors must carry out a full investigation into any alien whenever there are reliable reports that that alien is present in the Republic in violation of that Act. If it emerges from the investigation that the alien should be deported, the migration inspector has to request the Directorate-General of Migration to issue an arrest warrant setting out the facts and explaining the specific reasons why the alien appears liable to deportation. If the alien admits to any charge that would render him liable to deportation, a memorandum to that effect will be drawn up and signed by the inspector, and the alien where possible. If the alien denies the charges, he must prove that he is lawfully present in the country and has the right to a declaration about his entry. The Secretary of State for Internal and Police Affairs has the authority to determine whether any deportation proceedings should be cancelled if he finds that the alien is not liable to deportation, and to give the alien an opportunity to leave the country voluntarily within a specified period.

Article 14

75. Article 23, paragraph 1, of the Constitution states:

> "The exclusive powers of the Senate shall be:
>
> 1. To elect the judges of the Supreme Court of Justice, judges of the Courts of Appeal, the Land Tribunal and the Courts of First Instance, examining magistrates, justices of the peace and their deputies, and judges of any other judicial courts established by law".

76. The method of selecting judges has in fact been called in question, since there are indications that the majority political party in the Senate could exert pressure. Efforts are thus being made to establish a Judicial Council, the result of which would be a change in the Constitution, a change which politicians have been advocating for a long time.

77. During this new legislature, the Justice Commission has wanted not only the bar and related associations, but also the community to be involved in the selection of judges, which is made by the Senate; thus persons who have been preselected have been questioned about their conduct and the Senate has rejected their election. This is very important, since the health of a people depends on sound justice.

78. The Organization of Justice Act (No. 821) of 21 November 1927 governs all judicial rulings in the Dominican Republic. Article 67 of the Constitution gives the Supreme Court of Justice the power to exercise the highest disciplinary authority over all members of the judiciary and to order suspension or dismissal in the manner determined by law.

Article 15

79. Article 47 of the Constitution states: "The law provides only for the future. It has no retroactive effect, except where it would be favourable to a person whose case is sub judice or who is serving a sentence. In no circumstances may the law or any public authority undermine or impair the legal certainty deriving from situations established in conformity with previous legislation".

80. Article 4 of the Penal Code states that any minor, ordinary or serious offenses that have been committed may be punished only in accordance with a provision of the law enacted prior to their commission. Earlier constitutions contain similar provisions, such as that stating: "No one shall be compelled to do what the law does not require or be prevented from doing what the law does not prohibit". Nor may the judge impose penalties by analogy, since the courts have already ruled in this regard and the only offenses, whether minor, ordinary or serious, are those punishable by law; in no circumstances may the courts impose penalties by analogy, regardless of the nature of the offence.

81. The penalty must exist at the time of commission of the offence.

Article 16

82. Dominican law recognizes every human being as a "person", in other words, as a subject of rights and obligations.

Article 17

83. Article 8, paragraph 3, of the Constitution refers to the inviolability of the home, stating that no house search may be carried out except in the cases provided for by law and subject to the procedures prescribed by law.

Inviolability of correspondence

84. Article 8, paragraph 9, of the Constitution refers to the inviolability of correspondence and other private documents, which may not be seized or examined except under legal procedures relevant to matters which are being investigated by the courts. The secrecy of telegraphic, telephonic and cable communications is likewise inviolable.

Inviolability of the home

85. Chapter V of the Penal Code of the Dominican Republic, entitled "Abuses of authority against private individuals", provides, in article 184, that "Administrative or judicial officials, police officers or law-enforcement commanders or personnel who, abusing their authority, search the home of citizens, except in the cases and in accordance with the procedures prescribed by law, shall be liable to six days to one year of ordinary imprisonment and a fine of 16 to 100 pesos, without prejudice to the provisions of article 114, paragraph 2. Participants who use threats or violence to enter the home of a citizen shall be liable to six days' to six months' imprisonment and a fine of 10 to 50 pesos". Article 187 states: "Government officials or agents or persons in charge of post offices or their employees and assistants who

intercept or open letters entrusted to the post or who facilitate means of intercepting or opening such letters shall be liable to six months' to two years' imprisonment and a fine of 10 to 100 pesos. They shall also be liable to general disqualification from public positions and offices for one to five years".

Right to secrecy

86. Article 378 of the Penal Code also refers to private individuals, stating: "Any person who, in order to discover another person's secrets, takes possession of and discloses his papers or letters shall be liable to three months' to one year's imprisonment and a fine of 25 to 100 pesos. If he does not disclose them, the penalties shall be reduced by half. The penalties shall not be applicable to spouses, parents, guardians or persons acting in that capacity in respect of the papers or letters of their spouses or minors under their guardianship or responsibility".

Freedom of conscience

87. Regulations concerning the principle of freedom of conscience and of worship as embodied in article 8, paragraph 8, of the Constitution are set out in paragraph VIII of the Penal Code, entitled "Offences against freedom of worship", articles 260, 261, 262, 263 and 264 of which provide:

> "Anyone who, by means of threats or acts of violence, compels or prevents one or more persons from practising the Catholic religion or one of the religions tolerated in the Republic or from taking part in the practice of these religions; anyone who likewise prevents the celebration of certain feast days or the observance of days of obligation; and, in general, anyone who requires that workshops, shops or stores should be opened or closed in order to have certain types of work done or to prevent it from being done shall be liable, for this offence alone, to a fine of 10 to 100 pesos and 6 days' to 2 months' ordinary imprisonment.
>
> "Anyone who, by means of violence or disorder or causing a commotion, prevents or disturbs the practice of the Catholic religion in or outside the church or place intended for such worship shall be liable to six days' to two months' imprisonment and a fine of 10 to 100 pesos.
>
> "Anyone who, by words or gestures, insults a minister of the Catholic religion in the exercise of the functions of his ministry or who, in order to mock ceremonies authorized in the Republic, desecrates articles intended for worship shall be liable to a fine of 10 to 100 pesos and to one month to one year of imprisonment.
>
> "The penalty of civic dishonour shall be imposed on anyone who physically ill-treats a minister of religion in the exercise of the functions of his ministry.
>
> "The provisions of this paragraph shall apply only to disruptions, insults or acts of violence whose circumstances and nature are not punishable by more severe penalties under this Code".

Article 18

88. The Dominican Republic recognizes freedom of conscience and worship, as stated in article 8, paragraph 8, of the Constitution, which refers to "Freedom of conscience and of worship, subject to public order and respect for propriety" and, in order to protect this constitutional freedom, paragraph VIII of the Penal Code, entitled "Offences against freedom of worship", contains the provisions of articles 260 to 263 referred to above in connection with article 17.

89. As pointed out in the second report, various religions in the Dominican Republic freely practise their forms of worship in accordance with our legislation, acting properly, genuinely serving the community and thus enjoying respect and consideration.

90. There have recently been a few isolated cases of religious sects that want to impose their beliefs in an improper and disrespectful manner; we have to remain watchful so that these groups, which do not correspond to any known religion, do not harm our population with teachings that do not advocate mutual understanding on the part of all human beings.

Article 19

91. Doctrine and modern legal thinking require all legislation on the dissemination of ideas to guarantee: freedom of expression, except in cases of the abuse of such freedom; responsibility effectively required by the courts of law; and the removal of economic or any other obstacles to the free expression of ideas. The best way of achieving these lofty objectives is to enact a legal provision based on the following principles: prohibition of any preventive measure, interference or administrative control involving the expression of ideas and the communication of facts, and reduction of formalities prior to publication to a minimum. In order to guarantee the exercise of this right, Dominican legislation establishes the cases in which liability may be incurred for "press offences, thus ruling out any possibility of arbitrary repression that would jeopardize freedom of expression". As a result, the Expression and Dissemination of Ideas Act (No. 6132) was adopted on 15 December 1962. Article 1 states: "The expression of ideas shall be unrestricted, except in so far as it is contrary to the honour of persons, social order or public peace".

92. Article 8, paragraph 6, of the Constitution states: "Every person may freely and without prior censorship express his thoughts by means of the written word or any other form of graphic or oral expression. If the thought expressed is prejudicial to the dignity and morality of individuals, to public policy or to propriety, the penalties established by law shall be imposed".

93. All subversive propaganda is prohibited, whether through anonymous publications or any other means of expression designed to instigate disobedience of the law, but this does not restrict the right of analysis or criticism of legal precepts.

Article 20

94. In section II of the Constitution, relating to duties, article 9 (c) states: "The inhabitants of the Republic shall refrain from any act that is prejudicial to its stability, independence or sovereignty".

95. As a corollary to this constitutional principle, article 91 of the Penal Code punishes any illegal act aimed at provoking civil war and inciting citizens or inhabitants to take up arms against one another.

Articles 21 and 22

96. Article 8, paragraph 11 (a), of the Constitution states that the organization of labour is unrestricted, provided that trade unions, trade associations or similar associations conform, in their statutes and their activities, to a democratic organization compatible with the principles embodied in the Constitution and that their purposes are strictly related to labour matters and peaceful.

97. Supplementing these provisions, articles 293 to 361 (book V) of the Labour Code regulate all trade union activity in the Dominican Republic.

98. As at 1991, the Trade Union Registry Department of the Office of the Secretary of State for Labour had 2,210 officially listed trade unions, including 447 company unions, 919 occupational and professional unions, 834 independent trade unions (self-employed persons, such as lottery ticket vendors, chauffeurs, etc.), 157 federations and 18 confederations.

99. The law requires at least 20 employees for the formation of a trade union.

Political parties

100. Article 64 of Dominican Electoral Act (No. 5884) of 1962 establishes the conditions for recognition of political parties as applied for in exercise of the right of association and assembly embodied in article 8, paragraph 7, of the Constitution. Article 64 states: "Recognition as a political party may be granted to any group of citizens which is organized in accordance with the provisions of the Constitution and the laws for the primary purpose of taking part in the election of citizens to public office and proposing the implementation of programmes formulated in accordance with its particular ideology".

101. The application for recognition must be submitted by the organizers to the Central Electoral Board, together with the following documents:

(a) A description, however brief, of the party's principles, purposes and characteristics;

(b) List of its provisional governing bodies, including a provisional national executive, committee or governing council, with headquarters in the capital of the Republic, whose president will be the legal representative of the party vis-à-vis the Central Electoral Board;

(c) Records of the party's name and slogan, which will, as far as possible, reflect its founders' characteristics and purposes, will not contain names or words referring to persons or prefixes which indicate attitudes either in favour of or against present or past national or foreign practices, systems or regimes, and will not be confused with those of other parties;

(d) Drawings of the party's symbol, emblem or flag with the shape and colours that will distinguish it from that of any other existing parties. The same rules shall apply to symbols, emblems and flags as to names and slogans. In addition, symbols, emblems or flags must not include either all or part of the coat of arms or flag of the Republic or any religious symbol, image or emblem;

(e) A signed statement by the organizers that the party's members represent no fewer than 5 per cent of the total number of voters in the Electoral Register.

102. It should be pointed out that article 68 of the Electoral Act prohibits political parties from carrying out any activity aimed at, or resulting in, the suppression, flouting, impairment or violation of the individual and social rights and guarantees established in the Constitution.

103. The National Congress is still considering the draft labour code, but it does not comprise any modification of the right of government officials to strike.

Article 23

104. Since 1978, when amendments relating to the rights of spouses as to common property in marriage and parental authority were included in the Civil Code, a regime of equality and partnership between husbands and wives has been established. Since then, both spouses have had the right to elect the matrimonial domicile, to exercise parental authority and to be jointly responsible for debts contracted for the maintenance and upkeep of the home and the upbringing of their common children.

105. The relevant Act also established equal rights and duties for both spouses in respect of custody, maintenance, upbringing and guardianship, except where a father who recognizes a natural child within six months of the birth acquires an exclusive right with regard to the child's guardianship and custody.

106. This Act (No. 855 of 22 July 1978) guarantees the property rights of married women by providing that they may apply for the cancellation of property transfers carried out by their husbands in violation of their rights.

Article 24

107. Contrary to the international covenants and instruments to which the Dominican Republic is a party and which provide for equal rights for legitimate and natural children within the family and society, inequality still exists in Dominican positive law with regard to inheritance rights as

between natural and legitimate children in respect of paternal filiation; if there are any descendants, they are entitled to half of the inheritance of the legitimate child or his descendants.

108. Although international covenants and instruments become part of internal law once they have been ratified by the National Congress, some of the legislation in force is not in keeping with these covenants or instruments.

109. Matters relating to child labour are regulated by articles 222 to 232 of the Labour Code, which read:

> "Art. 222. Minors shall enjoy the same rights and shall have the same duties as adults as far as the labour laws are concerned, without any exceptions other than those provided for in this Code.
>
> "Art. 223. Work by minors under the age of 14 is prohibited.
>
> "Art. 224. Minors under the age of 18 may not be employed or work at night, for a period of 12 consecutive hours, which shall be determined by the Secretary of State for Labour and which necessarily cannot begin after 8.30 p.m. or end before 6 a.m. The limitations of this article shall not apply to minors under the age of 18 who work in family undertakings employing only the parents and their children or wards.
>
> "Art. 225. The working day for minors under the age of 18 may not in any circumstances be of more than eight hours' duration.
>
> "Art. 226. Any minor under the age of 18 who wishes to work in undertakings of any kind shall provide proof of his physical fitness to perform the work in question by means of a medical certificate issued free of charge by a doctor employed in the service of the State, the National District or a municipality.
>
> "Art. 227. No minor under the age of 16 years may engage in street vending without prior authorization by the Labour Department or the local authority exercising its functions. Street vending shall be taken to mean selling, offering for sale, placing and distributing items, products, goods, circulars, lottery tickets, newspapers or leaflets, as well as shoe cleaning or any other type of business conducted either in public places or house-to-house. In any other provision of the Labour Code, law which refers to or amends the Code, decree, regulation or decision in which the age of 18 is mentioned, it shall be understood to be reduced to the age of 16.
>
> "Art. 228. Minors aged between 14 and 18 may be employed during concerts and theatre performances until midnight, with the authorization of the Labour Department or the local authority exercising its functions.
>
> "Art. 229. Minors under the age of 18 are prohibited from being employed in dangerous or unhealthy work. The Office of the Secretary of State for Labour shall define such work.

"Art. 230. No minor under the age of 18 may work as a messenger for the distribution or delivery of goods or messages.

"Art. 231. No minor under the age of 18 may be employed in the retail sale of alcoholic beverages.

"Art. 232. The provisions of this chapter shall not apply to minors employed in agricultural work, except as prescribed in article 229."

Article 25

110. All Dominicans, of both sexes, may have access to all public offices provided that they have the necessary qualifications. Women have enjoyed all civil rights on an equal footing with men since 1940. They have the right to vote and to be elected in the same way as men; they are taking part, by means of their work, in the development of the country and enjoy all rights. In the Dominican Republic, it is frequently the case and normal that both urban and rural women, perhaps even to a greater extent than men, are being educated at the university level and trained, to the point where they are able to seek a role in both national and international affairs. Many women occupy leading positions in important secretariats, such as finance, education and health, and serve as ambassadors representing the country in the international community.

111. Article 100 of the Constitution states: "The Republic condemns any privilege or situation liable to impair the equality of all Dominicans; the only differences between them shall be those deriving from their talents or virtues. Consequently, no entity in the Republic may confer titles of nobility or hereditary distinctions".

Article 26

112. The Constitution of the Dominican Republic provides for the equality of all persons, without discrimination as to race, colour, sex, language, religion, political or other opinions, national or social origin, financial position, birth or any other social status. Article 8 of the Constitution, as referred to in earlier paragraphs of this report relating to individual and social rights does not make any distinction, but refers only to persons; consequently, all individuals in Dominican territory enjoy the same rights.

113. Article 100 of the Constitution also refers to equality and non-discrimination; it is reproduced in the last part of the paragraph of this report relating to article 25.

Article 27

114. Article 11 of the Civil Code provides that an alien shall in the Dominican Republic enjoy the same civil rights as those granted to Dominicans under treaties of the country of which the alien is a national, and article 13 of the Code states that an alien whom the Government has allowed to elect domicile in the Republic shall enjoy all civil rights as long as he resides in the country. Aliens residing in the Republic are not kept separate, do not live isolated lives, are all involved in national activity, are not prohibited

from using their own language, enjoy respect for their religions and are not subject to discrimination of any kind. In view of the territory's small size and its economic conditions, which are those of an underdeveloped country, there are not many aliens, except for Haitian nationals who, geographically, share an island with Dominicans.

115. As has already been pointed out, freedom of worship is provided for in the Constitution. All persons who live in the territory of the Dominican Republic enjoy full freedom of worship. This is very much respected and there is thus a wide variety of religions throughout the country; they are practised on an equal footing by nationals and aliens.

116. At present, a total of 159,849 legal residents of various nationalities are registered in the Dominican Republic, but, as already noted, they are integrated with other inhabitants of the country, since they enjoy the same civil rights as nationals and may carry out their legal activities in a normal manner. There are no ethnic, religious or language minorities in the Dominican Republic.